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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

B5

FILE:

WAC 05 170 51259

Office: CALIFORNIA SERVICE CENTER

Date: MAR 29 2006

IN RE:

Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Σ Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected. The AAO will return the matter for further action by the director.

The alien beneficiary seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability. The beneficiary is a church construction officer for the [REDACTED]. The beneficiary seeks an exemption from the requirement of a job offer, and thus of a labor certification, in the national interest of the United States. The director found that the beneficiary does not qualify for classification as an alien of exceptional ability, or for a national interest waiver of the job offer requirement.

Part 1 of the Form I-140 petition rather ambiguously identifies both the beneficiary and [REDACTED] as the petitioner. Review of the petition form, however, indicates that the alien beneficiary is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 8 of the Form I-140, "Signature," has been signed not by any church official, but by the alien beneficiary himself. Thus, the alien, and not the [REDACTED] has taken responsibility for the content of the petition. While a church official prepared the petition form, the alien himself is the only party we can justifiably consider to be the petitioner.

8 C.F.R. § 103.3(a)(1)(iii) states that, for purposes of appeals, certifications, and reopening or reconsideration, "affected party" (in addition to the Citizenship and Immigration Services) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. 8 C.F.R. § 103.3(a)(2)(v) states that an appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

Here, the appeal was filed not by the petitioner, but by the [REDACTED] which has no standing to file an appeal on the petitioner's behalf. We must, therefore, reject the appeal as improperly filed.

We note, at the same time, that the director sent the notice of decision not to the alien self-petitioner, but to the [REDACTED] presumably because the Form I-140 identified the church as the petitioner. Thus, the director has never issued any relevant notices to the petitioner himself.

8 C.F.R. § 103.5a(a)(1) defines "routine service" as mailing a copy by ordinary mail addressed to a person at his last known address. 8 C.F.R. § 103.5a(b) states that service by mail is complete upon mailing. Here, because the director addressed the notices to the attention of an official of the [REDACTED] rather than to the alien self-petitioner himself, the director has arguably never served the notice of denial. Thus, the self-petitioning alien has never had the opportunity to file a timely appeal. The director must reissue the denial notice in order to give the actual petitioner that opportunity.

We note that, if the alien petitioner chooses to appeal the director's decision, statements from church officials will be duly considered, albeit as witness statements rather than as the petitioner's own arguments. Because there is, as yet, no valid appeal in the record, we examine, here, neither the basis of the denial nor the merits of the appeal.

submitted by the [REDACTED] We will duly consider those factors if and when the self-petitioning alien files a proper and timely appeal.¹

We note that the director indicated on the notice of decision that the fee to file an appeal is \$110. While the appeal fee used to be \$110, that fee was increased to \$385 for all appeals filed on or after September 28, 2005, pursuant to new regulations published at 70 Fed. Reg. 50954 (August 29, 2005). The director's notice of decision was issued on November 9, 2005, more than a month after the fee increase took effect. When the director reissues the notice of decision, the director must advise the petitioner of the correct fee amount.

The appeal has not been filed by the petitioner, nor by any entity with legal standing in the proceeding, but rather by the beneficiary. Therefore, the appeal has not been properly filed, and must be rejected. The director must serve a newly dated copy of the decision, properly addressed to the petitioner.

ORDER: The appeal is rejected. The matter is returned to the director for the limited purpose of the reissuance of the decision.

¹ It is conceivable that the petitioner may choose not to pursue this matter any further. An earlier petition (receipt number WAC 03 256 54509) had been filed on the alien's behalf, seeking to classify the alien as a special immigrant religious worker. The director had approved that petition but revoked that approval; the AAO reversed the director's decision, thereby reinstating the approval of the special immigrant religious worker petition. Because the alien is already the beneficiary of an approved immigrant position, with a September 12, 2003 priority date, the approval of the present petition would be of no obvious additional benefit to the alien.